

Overview of Recovery Act FAR Clauses

The Table below provides a brief overview of the FAR clauses in FAC 2005-32. These clauses and H.999 Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009 must be incorporated into all contracts and orders that will have Recovery Act funds.

ARRA Requirement	Clause Number	Prescription
Section 1605 Buy American	52.225-21	Include in Recovery Act funded contracts for construction projects under \$7,443,000 - replaces 52.225-9
	52.225-22	Include if using 52.225-21 – replaces 52.225-10
	52.225-23	Include Recovery Act funded contracts for construction projects of \$7,443,000 or more – replaces 52.225-11
	52.225-24	Include if using 52.225-23 – replaces 52.225-12
Section 1552 Whistleblower Protection	52.203-15	Include in all Recovery Act funded contracts
Section 1512 Reporting Requirements	52.204-11	Include in all Recovery Act funded solicitation, contracts and orders
Sections 902, 1514 and 1515 GAO/IG Access	52.212-5 Alternate II	Include in all Recovery Act funded solicitations, contracts and orders for commercial items under Part 12
	52.214-26 Alternate I	Include in all Recovery Act funded solicitations and contracts when using sealed bidding under Part 14
	52.215-2 Alternate I	Include in all Recovery Act funded solicitations, contracts and orders in all negotiated action subject to Part 15

4.4 Are there terms and conditions, beyond standard practice, that must be included in contract agreements under Recovery Act?

Contracting Officers must incorporate the FAR Recovery Act clauses from Federal Acquisition Circular 2005-32 into all solicitations and new and amended contracts and task orders. Contracting Officer must also incorporate the Special Terms and Conditions – Acquisition (Attachment 4) into all new and amended contracts and task orders to ensure contractor compliance with the requirements of the Recovery Act not covered by the FAR clauses.

4.5 Are there actions, beyond standard practices, that agencies must take related to oversight and audit of contracts awarded under Recovery Act?

Additional audits may be required for contracts using Recovery Act funds. Incurred cost audits should be performed during the closeout process. There will also be additional oversight from outside of DOE. The Recovery Accountability and Transparency Board, established by the Act, Congress and the Office of Management and Budget will oversee and monitor implementation of the Recovery Act through periodic reporting on the use and expenditure of funds.

4.6 Can Recovery Act funds be used in conjunction with Interagency Agreements?

Interagency Agreements may be used to transfer the funds to another agency. Interagency Agreements must spell out the assignment of agency roles and responsibilities to fulfill the unique requirements of Recovery Act. These include, but are not limited to, report development and submission, accurate and timely data reporting, and special posting requirements to agency web sites and Recovery.gov. Planning is essential to ensure work performed under the Interagency Agreement supports the goals of the Recovery Act. If there will not be job creation or retention, a different method of obtaining the services should be considered.

DOE may accept fund-in Interagency Agreements, including those under the Work for Others program, with Recovery Act dollars if the above items are addressed. However, special consideration should be given as to whether or not the acceptance of work funded by the Recovery Act meets the goals of the Act. If new personnel will not be hired, it is not appropriate to accept funds from another agency.

4.7 What are the special Buy American requirements?

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council will issue an interim rule (FAR Case 2009-008) amending the FAR to implement the Recovery Act with respect to the Buy American provision, section 1605. Section 1605 prohibits the use of funds appropriated or otherwise made available by the Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances: (1) iron, steel, or relevant

SPECIAL TERMS AND CONDITIONS – ACQUISITION

[Use as an H clause or include under the Laws, Regulations and Directives clause.]

H.999 Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009 (Apr 2009)

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be

reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

This clause must be included in every first-tier subcontract.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See

April 2, 2009

Attachment 4

<http://www.dol.gov/esa/whd/contracts/dbra.htm> .

E. Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov , maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under paragraph H below.

G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.